practically of no value unless used as the same have been located and constructed, any provision that would prohibit their being used for the purposes and as the same were constructed and designed to be used would deny it the equal protection of the laws and deprive it of its property without due process of law.

4. The State lays an unequal burden on the plaintiff as compared with corporations of Arkansas, in that domestic corporations, organized and existing at the time of the passage of the statute, are not required to pay into the treasury of the State any sum whatever upon their capital stock, but are allowed to continue their business without the payment of any sum; while corporations of other States, even those having lines within the State, under the protection thereof, are required to pay a large tax measured by their *entire capital stock, wherever employed*, for the privilege of continuing in Arkansas their established and existing business, whether the same be domestic or foreign commerce.

5. Upon the failure of the company to pay the required fee, based on its capital stock employed both within and without the State, the company is forbidden, or is not allowed, to make any contract within the State, which can be enforced either in law or equity, whether the same relates to domestic, interstate or foreign commerce; whereby, it is alleged, the statute denies to the company the equal protection of the laws, and seeks to enforce an illegal exaction for the privilege of using its property for purposes of domestic, interstate and foreign commerce.

6. As the company originally—some thirty or forty years ago—entered the State of Arkansas and constructed and has operated its lines of telegraph, with the consent of the State, and during that period has extended and operated its lines within its limits, with its consent; as the State, from time to time, through legislative enactments, has not only recognized the company's right to transact business within its limits, but regulated its business and affairs; and as, during the above

period, with the knowledge and acquiescence of the State, and in reliance upon such license, consent and acquiescence the company has expended large sums of money for the purpose of transmitting messages between the people of Arkansas, the State cannot withdraw its license and expel the company from its limits, even with respect to local business, without impairing the obligation of the company's contract with the State.

Such is the case as made by the bill; and the relief asked is a decree, declaring the statute unconstitutional and restraining any attempt to collect said fee of $25,050, and from imposing any of the penalties prescribed by it or by any provision therein (except the one requiring the designation of an agent upon whom process may be served in any suit brought against the Telegraph Company) and enjoining the defendant from attempting to revoke, or from proclaiming that he has revoked, its authority to do business in Arkansas.

The first contention of the appellant that this action is one against the State within the meaning of the Eleventh Amendment of the Constitution, declaring that the judicial power of the United States shall not extend to any suit in law or equity against a State by a citizen of another State. This contention must be held untenable on the authority of *Western Union Telegraph Company* v. *Andrews &c.*, this day decided. See p. 165, *post*.

But the vital question in the case is as to the constitutionality of the Arkansas statute. It is insisted by the defendant, among other grounds, that the provision in the statute requiring a foreign corporation, seeking to do business in the State, to pay a fee based upon the amount of its capital stock, for *filing* with the Secretary of State its articles of incorporation or association is a device which, in effect and by its necessary operation, under the guise of regulating intrastate business, imposes a tax on the interstate business of such corporation, as well as a tax on its property used and permanently located outside of the State.

Interpreting it according to the ordinary acceptation of its words, the statute does not discriminate between corporations engaged in interstate commerce and corporations whose business is intrastate in its character, so to make it clear that the State has not assumed to regulate or burden interstate business. Its words are unqualified and are made applicable to "*every* company or corporation incorporated under the laws of any other State, Territory or county, including foreign railroad and foreign fire insurance and life insurance, now or hereafter doing business in this State." § 1. "*Any* foreign corporation which shall fail to comply with the provisions of this act and shall do any business in this State," etc. § 2. "*All* corporations hereafter incorporated in this State and *all* foreign corporations seeking to do business in this State," etc.[1] According to the words of the statute, not unreasonably construed, every corporation of another State, seeking to do business in Arkansas, whether interstate or domestic, in order that it may do business of any kind in Arkansas, without coming into conflict with the statute, must file a copy of its authenticated charter with the Secretary of State; and it seems that before that officer will file such copy the corporation must pay to him a given amount based upon its capital stock, representing, necessarily, *all* its business, interstate and intrastate, as well as *all* its property everywhere, *beyond as well as within the State*. If the foreign corporation, without first paying those amounts, does business of any kind in the State it will incur not only the penalty of $1,000 for so doing but will forfeit its right to make any contract in the State, enforcible in law or equity—whatever its subject-matter—even if it be one relating to the business of the United States or to commerce among States. A statute of that kind would be palpably in conflict with the Constitution, and, especially an invasion of rights under that instrument of a corporation engaged in interstate commerce and seeking to do business in Arkansas.

But, it is said, that the statute in question should not be so

broadly construed. The reasons given for this contention are these: Before the statute here in question was passed there was in force in Arkansas a statute (act of February 16th, 1899, as amended by the act of May 8th, 1899, Kirby's Dig., chap. 31) which was very similar, in many respects, to the act of 1907, now under examination. The state Supreme Court had occasion to determine the scope and effect of that act of 1899. Its decision was handed down March 18th, 1907, while the Legislature of Arkansas was in session, and on the same day another decision was rendered holding material parts of that act to be repealed. *Western Union Tel. Co.* v. *State*, 82 Arkansas, 302; *Same* v. *State*, 82 Arkansas, 309. These decisions, as counsel suggest, virtually left the State without any statute prescribing fees to be paid by foreign corporations. Thereafter, on May 13th, 1907, the Legislature passed the statute here in question, known as the Wingo Act, which, with slight exceptions not necessary to be mentioned, was substantially like the act of 1899. The Supreme Court of the State, in *Western Union Tel. Co.* v. *State*, 82 Arkansas, 309, 314, construing the above act of 1899, had held that it was its duty, unless otherwise compelled by the plain, ordinary meaning of the words of a statute, to reject any construction that would bring it into conflict with the Constitution of the United States, *Grenada County* v. *Brogden*, 112 U. S. 261; Cooley's Const. Lim., § 218; *Atty. Gen.* v. *Electric Storage Battery Co.*, 188 Massachusetts, 239; that it was too well settled to admit of debate, that "it is beyond the power of the State under the guise either of a license tax or police regulation to impose burdens upon interstate commerce or to deny a foreign corporation the right to engage in such commerce in the State"—citing *Leloup* v. *Port of Mobile*, 127 U. S. 640; *Crutcher* v. *Kentucky*, 141 U. S. 47; and *Brennan* v. *Titusville*, 153 U. S. 289. Its conclusion, in that case, was that the act of 1899 "must be construed to have been intended only to impose terms upon the right of a foreign corporation to carry on *intra*state business and it was a valid statute." Now, the

argument at the bar was that when the Wingo Act was passed, the Legislature must be deemed to have had in mind the judicial construction given to the previous act of 1899, and that it must be assumed that the same court would adhere to its already expressed views; so, that if a case ever came before it hereafter that involved the meaning and scope of the Wingo Act, expressed substantially in the same words as the act of 1899, the court would construe the Wingo Act, as it construed the act of 1899, as intended only to apply to intrastate business, and not as having been enacted *for the purpose* of burdening or imposing illegal terms for the transaction of interstate business by foreign corporations in Arkansas.

But the acceptance of this view would not remove the difficulty which confronts the State in the present case. According to well-settled rules of statutory construction, the validity of a statute, whatever its language, must be determined by its effect or operation, as manifested by the natural and reasonable meaning of the words employed. *Henderson* v. *Mayor*, 92 U. S. 259, 268. If a statute, by its necessary operation, really and substantially burdens the interstate business of a foreign corporation seeking to do business in a State, or imposes a tax on its property outside of such State, then it is unconstitutional and void, although the state Legislature may not have intended to enact an invalid statute. But even if we should assume that the state court would construe the statute of 1907 as intended not to apply to interstate commerce but only to local or intrastate business, we are, nevertheless, informed by its decision in *Western Union Tel. Co.* v. *State*, 82 Arkansas, 302, 318, that, in the opinion of the state court, the statute so construed is valid, and therefore the Telegraph Company, in order that it may safely continue local business in Arkansas, *must* first pay into the treasury of the State certain amounts based on its *entire capital stock for simply filing its articles of incorporation* with the Secretary of State; and if it does not pay the specified fees, based on its entire capital stock, and yet continues to do intrastate busi-

ness in Arkansas, it will incur the prescribed penalty of *one thousand dollars* for continuing to do business in the State, and, in addition, lose its power or right to make any enforcible contract in the State. These are, in effect, *conditions* upon which the Telegraph Company, lawfully engaged in interstate business, and entitled to be in Arkansas for such business, is permitted to enter the State to do local business within its limits. And these conditions have been prescribed, notwithstanding the company has been permitted for many years, long before the act here in question was passed, to do local business in the State with its permission and acquiescence, and has invested there large sums of money in preparing to serve the public efficiently in that kind of business. The capital stock of the company represents, we repeat, *all* its business, property and interests throughout the United States and foreign countries, and the requirement that the company, engaged in interstate commerce, may continue to do a local business in Arkansas, and escape the heavy penalties prescribed, must pay a given amount (in this case $25,050), based on all its capital stock, merely for filing its articles of incorporation with the Secretary of State, is, in effect, a direct burden and tax on its interstate business, as well as on its property outside of the State. The case cannot be distinguished in principle from *Western Union Tel. Co.* v. *Kansas*, *ante*, p. 1, and *Pullman Company* v. *Kansas*, *ante*, p. 56, recently decided. The difference in the wording of the Kansas and Arkansas statutes cannot take the present case out of the ruling of the former cases. On the authority of the *Kansas cases*, and for the reasons stated in the opinions therein, we hold the statute in question to be unconstitutional and void, as illegally burdening interstate commerce and imposing a tax on property beyond the jurisdiction of the State.

Whether the statute of Arkansas is, in any particular, violative of the constitutional guaranty securing the equal protection of the laws, or of the guaranty prohibiting the deprivation of property, except by due process of law, or of any

other constitutional guaranty, it is not necessary now to consider. What has been said is sufficient for the determination of the present case, and we do not at this time go further than is indicated in this opinion. Suffice it to say that the defendant threatens to issue, in his official capacity, and publish, in the newspapers, a proclamation to the effect—no matter upon what specific grounds—that the Telegraph Company is not authorized, but is forbidden, under penalty, by the laws of Arkansas, from continuing to do local business in that State. Such a proclamation, which the court, as well as every one else, must know, would not only produce confusion in and irreparable damage to the company's business in Arkansas, but would, in effect, declare that the company is not only subject to a prescribed penalty of $1,000 for continuing to do local business in Arkansas, but is forbidden to make any contract whatever in that State that is enforcible in law or equity. In order to prevent the contemplated or threatened injury to the company the court below properly made a decree, perpetually enjoining the appellant, as Secretary of State, his agents and attorneys, from making proclamation that the Telegraph Company has no authority to continue doing business in Arkansas.

Mr. Justice Moody heard the argument of this case, participated in its decision, and concurs in this opinion.

The Chief Justice, Mr. Justice McKenna and Mr. Justice Holmes dissent.

The decree below must be affirmed.

It is so ordered.

WESTERN UNION TELEGRAPH COMPANY v. ANDREWS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 8. Argued April 13, 14, 1909.—Decided February 21, 1910.

Individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or a criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action; and such an action is not prohibited by the Eleventh Amendment of the Constitution of the United States. *Ex parte Young*, 209 U. S. 123.

THE facts are stated in the opinion.

Mr. Rush Taggart and *Mr. Henry D. Estabrook*, with whom *Mr. Geo. B. Rose* was on the brief, for appellants.

Mr. Hal L. Norwood, Attorney General of the State of Arkansas, with whom *Mr. Joseph M. Hill*, *Mr. William F. Kirby* and *Mr. Otis T. Wingo* were on the brief, for the appellees.

MR. JUSTICE DAY delivered the opinion of the court.

This case grows out of alleged actions about to be taken to enforce against the Western Union Telegraph Company the penalties denounced in the act of May 13, 1907, of the legislature of Arkansas entitled "An Act to permit foreign corporations to do business in Arkansas, and fixing fees to be paid by all corporations."

As this act has just been the subject of consideration in *Ludwig, Secretary of State*, v. *The Western Union Telegraph*

Company, decided to-day, *ante*, p. 146, it is unnecessary to set out at large the provisions of the statute in question.

The bill in this case was brought against the prosecuting attorneys of the seventeen judicial circuits of the State of Arkansas to enjoin them from instituting actions against the Western Union Telegraph Company to recover the penalties of $1,000 for each alleged violation of the act. It was averred in the bill that the defendant prosecuting attorneys would, unless restrained by the order of the court, institute numerous actions, as they had threatened to do, for the recovery of the penalties aforesaid. The learned District Judge sustained the demurrer to the bill and dismissed the case upon the ground that the action is, in effect, a suit against the State of Arkansas, and for that reason prohibited by the Eleventh Amendment to the Federal Constitution. The sole question presented upon this record is as to the correctness of that ruling.

Since the decision in the Circuit Court this court has decided the case of *Ex parte Young*, 209 U. S. 123, 155. In that case the previous cases in this court concerning the application of the Eleventh Amendment of the Constitution were fully considered, and it was then said by Mr. Justice Peckham, speaking for the court:

"The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or a criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

This doctrine is precisely applicable to the case at bar. The statute specifically charges the prosecuting attorneys with the duty of bringing actions to recover the penalties. It is averred in the bill, and admitted by the demurrer, that they threatened and were about to commence proceedings for that purpose.

The unconstitutionality of the act is averred, and relief is sought against its enforcement. As this case is ruled, upon the question of jurisdiction, by the case of *Ex parte Young*, it is unnecessary to consider the question further. Upon the authority of that case the decree of the Circuit Court dismissing the bill for want of jurisdiction is reversed and the cause remanded for further proceedings.

Reversed.